



Australian Government

Department of Finance and Deregulation
Office of Best Practice Regulation

Submission – Productivity Commission Draft Report Regulatory Impact Analysis: Benchmarking

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Mr Robert Fitzgerald and Mr Paul Coghlan
Commissioners
Regulatory Impact Analysis: Benchmarking
Productivity Commission
PO Box 1428
Canberra City ACT 2601

Dear Mr Fitzgerald and Mr Coghlan

Department of Finance and Deregulation Submission to the Productivity Commission – Draft Report – Regulatory Impact Analysis: Benchmarking

Thank you for the opportunity to comment on the Productivity Commission's *Regulatory Impact Analysis: Benchmarking* draft report. The Office of Best Practice Regulation (OBPR) provides the following input to assist the Commission with its final report.

We note that the criteria for adequacy for both Commonwealth and Council of Australian Government RISs are freely available online together with comprehensive guidance material on a number of other topics. In addition, the OBPR also publishes all RISs once they have been finalised. The availability of this information will allow the Productivity Commission to assess the validity of all claims which have been made by various stakeholders during consultation.



I also note that Ms Susan Page, Deputy Secretary of Deregulation Group, wrote separately to Mr Gary Banks on 28 August on a number of other matters relating to this report. Should you wish to discuss any of the issues arising in this letter, please do not hesitate to contact me.

Yours Sincerely,

Jason McNamara

Executive Director
Office of Best Practice Regulation

Attachment

COAG RIS process - Energy Efficiency for Residential Buildings

On page 64, the draft report notes that the submission from Master Builders Australia raised concerns that COAG had made a decision to introduce 6-star energy efficiency regulations on new residential buildings “well before a RIS was formulated”.

The OBPR understands that COAG decided to introduce mandatory 5-star energy ratings for new residential buildings in 2006. In 2009, COAG agreed that it would consider the introduction of even more stringent energy efficiency ratings for new residential buildings. Although COAG considered the issue, it did not agree to adopt additional regulation in this area. Similarly, the relevant Ministerial Council made no decision to introduce a mandatory 6-star efficiency standard for residential buildings across Australia. Individual state governments have since introduced mandatory 6-star energy efficiency standards in their jurisdiction. However, these decisions were never made at a national level.

During 2009-10 the Australian Building Codes Board did complete both a consultation stage RIS and a decision stage RIS on increasing the stringency of energy efficiency provisions for residential buildings. Both RISs were assessed as adequate by the OBPR and were made public in accordance with the COAG best practice regulation requirements in due course.

The outposting of OBPR officers


Box 3.1 of the draft report suggests that the role of best practice regulation co-ordinators has been taken over by outposted OBPR officers. The Government agreed to the outposting of OBPR officers to expand the capability of departments and agencies to prepare high quality RISs and PIRs and provide advice on technical requirements. Co-ordinators remain within agencies. Typically outpostings are undertaken in relation to specific proposals. Co-ordinators have an ongoing role in overseeing RIS activity within an agency.

The Government agreed to the ‘outposting’ model, where agencies can request OBPR officers to be seconded in order to assist them to prepare an adequate RIS. The role of the OBPR officer is to facilitate the development of a RIS or a PIR which can be signed off by the agency. The involvement of an OBPR outposted officer in developing a RIS does not transfer responsibility for the RIS, nor does it alter the adequacy requirements or the manner in which the OBPR assesses a draft RIS against these requirements.

Page 98 of the draft report states “There are up to six outpost officers in various agencies at any one time”. There is not a set limit on the number of outposted officers. The cost cited in the draft report for agencies using outposted officers is not correct. Staff are provided on a cost recovery basis and that cost can vary with the nature of the outposting.

RIS quality and adequacy assessments

On page 231, the draft report states that the OBPR adequacy assessments for both Commonwealth and COAG RISs “state whether a RIS is ‘adequate’ or ‘inadequate’”. This statement does not accurately reflect the requirements. RISs considered adequate by the OBPR are required to be published in full in order to be compliant with the best practice regulation



requirements. As such there is no “inadequate” assessment category – RISs are either adequate, or the responsible agency is non-compliant.

Drafting the RIS is the responsibility of the department or agency. In the Australian Government RIA framework, a draft RIS must be certified by the relevant departmental secretary or deputy secretary (or agency head/deputy head) prior to being passed to the OBPR for assessment. The OBPR will only formally assess the adequacy of a RIS once it has been certified.

The OBPR provides drafting advice as early as possible in the RIS process to drafting officers. This usually takes the form of written comments on drafts of RISs, and meetings with the relevant agency to discuss such comments. Usually, the OBPR has provided significant advice in this form prior to certification and formal assessment. This guidance and advice is specific to the RIS in question, and is in addition to the general guidance material contained in the Best Practice Regulation Handbook.

If the OBPR has assessed a draft Commonwealth Government or COAG RIS as “not adequate”, the OBPR provides the drafting agency a letter detailing the reasons for the OBPR’s view. This letter also outlines the steps which need to be taken in order to bring the RIS to an adequate standard. The first draft of a RIS which is submitted to the OBPR for assessment often fails to meet the best practice regulation adequacy requirements in full. In almost every case, the drafting agency utilises the OBPR’s advice to improve the document so that it meets the best practice regulation requirements. It is usual for the OBPR to provide formal feedback on a RIS several times before it can be assessed as adequate.

To be assessed as adequate, a RIS must have a degree of detail and depth of analysis that is commensurate with the magnitude of the problem and the size of the potential impact of the proposal. Subject to this principle, the criteria which will be used by the OBPR to assess whether a RIS contains an adequate level of information and analysis are specified in the *Best Practice Regulation Handbook 2010* (Chapter 2, Box 3). There is no “inadequate” assessment category for final RISs. The OBPR assesses each RIS for adequacy against the criteria set out in the Best Practice Regulation Handbook 2010 (for Commonwealth Government RISs) and the *Council of Australian Government Best Practice Regulation Guide 2007* (for COAG RISs). An adequate RIS, by implication, is considered by the OBPR to meet those criteria.

New OBPR guidance note: Carve-outs

Section 5.2 of the draft report raises the issue of what the OBPR refers to as ‘carve outs’. There are a number of points made on page 144 of the draft report which are no longer accurate. On 21 September 2012, the Office of Best Practice Regulation published an external guidance note clearly setting out the criteria for the use of RIA carve outs together with a full list of the existing carve outs. The Commission may wish to consider updating the draft report accordingly. The guidance note and the list can be viewed on the OBPR’s website here: <http://ris.finance.gov.au/2012/09/21/guidance-note-carve-outs/>.

Transparency

Page 234 of the draft report is critical of the OBPR’s annual report:

It also appears that the depth of compliance information provided in more recent OBPR annual reports has reduced over time. For example, OBPR annual reports used to present RIS compliance information by relative significance of regulatory proposal — this no longer occurs. In the foreword to its most recent annual report, the OBPR flagged its intention to reduce even further the depth of reported information (OBPR 2011a).



It is not correct to suggest that the OBPR intends to reduce the depth of information reported about RISs and compliance with the best practice regulation requirements.

Although certain information will no longer be contained within the OBPR annual report, this does not imply that the information will no longer be reported. While the OBPR intends to reduce the amount of content being included in the printed 'annual report' document, this is because either the content is being made available through other, more accessible sources, or because the Australian Government RIA framework has changed such that some data previously reported are no longer relevant.

Recent innovations in the compliance reporting practices for Commonwealth and COAG RISs have operated to enhance the transparency and accessibility of information about regulation impact assessment. The Productivity Commission may wish to update the draft report to reflect current practice.

Since July 2010, the OBPR has published Commonwealth Government RISs on its website (<http://ris.finance.gov.au>) as soon as practicable after public announcement of the relevant decision. An analogous practice was adopted for COAG RISs in October 2010. Prime Minister's exemptions and non-compliance are also made public on the website as soon as practicable after a regulatory decision is announced. Since July 2012, OBPR has also publicised the publication of RISs and non compliance announcements via the use of Twitter.

The purpose of the website is to make all RISs assessed as adequate by the OBPR available in one location, as soon as possible following decision announcement (to avoid any confidentiality issues that may arise from releasing the RIS prior to announcement) thereby improving transparency surrounding regulatory decision making. The primary target audience is the regulated business and not-for-profit community. Anecdotally, the site has also become a resource for regulation policy makers who use it to identify best practice RISs when they in turn are preparing their own RIS. A usage survey is yet to be undertaken but visits to the site have increased steadily since full operation began.

As well as making RISs more accessible, the website invites stakeholder feedback through a public comment facility, or "blog". This is intended to help improve the quality of future RISs. Policy relevant feedback is referred to the policy maker, while RIS-related feedback is used directly by the OBPR.

With the increased use of real time online reporting, the OBPR provides all of the information about compliance via its website and also keeps live compliance statistics. The published information covers everything which was previously contained in previous annual reports, except for the OBPR's assessment with regards to relative significance.